IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Supreme Court, U. S.
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No. 75-1150

CITY OF PHILADELPHIA, CITY OF GLEN COVE, LANDFILL AND DEVELOPMENT COMPANY, MAC SANITARY LANDFILL, INC., KINSLEY'S LANDFILL, INC., and DELORENZO-INTERSTATE WASTE REMOVAL CO., INC. (now INTERSTATE WASTE REMOVAL CO., INC.),

Appellants,

v.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY and RICHARD J. SULLIVAN, Commissioner of the Department of Environmental Protection of the State of New Jersey,

Appellees.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

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AND BRIEF IN SUPPORT THEREOF

Motion to Dismiss

Pursuant to Rule 16(1)(b) of this Court, the Attorney General of the State of New Jersey, on behalf of appellees, hereby moves to dismiss this appeal on the grounds that it does not present a substantial federal question.

Question Presented

1. Does the Commerce Clause (Article I, Section 8, Clause 3) of the United States Constitution require a state acting to fulfill its obligation to provide solid waste disposal facilities for its own residents also to provide such facilities for other states?

Counter-Statement of the Case

The crisis in solid waste disposal leading to the enactment of the legislation challenged on this appeal (New Jersey Public Laws of 1973, chapter 363, N.J.S.A. 13:1I-9 et. seq.) is appropriately described in a report submitted to the trial court in support of the State's motion for summary judgment, entitled "Basis and Background for the Proposed Rules of the Bureau of Solid Waste Management", as follows:

> "In 1971, at least 1½ million tons of solid waste generated outside of New Jersey were buried within this State. The failure on the part of our neighboring states to provide suitable disposal facilities of their own has consumed thousands of landfill acres in New Jersey, has contributed to the degradation of our environment, and is increasing the cost of disposal for our own municipalities. The

> depletion of landfill space and the enforcement of stringent air quality standards in the metropolitan regions of our neighboring states is increasing the volume of out-of-state waste disposed of in New Jersey at an ever-increasing rate.
>
> "It is estimated that our metropolitan counties of Bergen, Essex, Hudson, Passaic and Union have no more than three years of landfill space remaining. In an effort to slow down the landfill depletion process, the Department of Environmental Protection, in conjunction with the Hackensack Meadowlands Development Commission, recently instituted a ban on the disposal of out-of-state waste within the Hackensack Meadowlands Development Commission district. The Hackensack Meadowlands ban caused collectors of out-of-state waste to travel into the suburban regions of the state, thus threatening the life expectancy of those disposal sites. This increased the cost of solid waste collection and disposal for New Jersey's residents, for when nearby disposal sites are depleted, collectors must haul their waste longer and longer distances into the State's suburbs and rural areas.
>
> "Since the Solid Waste Management Act took effect in 1970, over forty landfill sites have closed. During that same period only nine new disposal sites have commenced operations and, of these, only three accept general municipal-type wastes for disposal. Concurrently, more and more landfill operations are discovering that their acreage includes unusable flood plain or tidal marsh areas and original estimates of their waste capacity were erroneously high. The lands now utilized for sanitary landfills are limited, and both industry and local government

have expressed concern over the scarcity of suitable new sites.

"One measure of the problem is the increasing volume of waste which requires disposal each year. While the rate of waste generation within New Jersey is rising steadily, the volume of waste imported from other states is increasing at an alarming rate. The depletion or abandonment of solid waste facilities in our neighboring states has greatly affected the tonnage of solid waste which is brought into New Jersey for disposal." (Pa43 to Pa44).*

ARGUMENT

The appellants have not presented a substantial constitutional issue entitling them to appeal, because the decisions of the Court firmly establish that the Commerce Clause of the United States Constitution does not prohibit a State from taking action to prevent the importation of substances harmful to public health and the environment.

The question presented, simply stated, is whether a state may, consistent with the Commerce Clause, seek to deal with a solid waste disposal crisis of substantial proportions by prohibiting the dumping of waste originating outside the state.

The nature of the crisis was stated in emphatic terms by the New Jersey Legislature and the Supreme Court of New Jersey. Section 1 of chapter 363 states:

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*This notation refers to the appendix filed with the Supreme Court of New Jersey, which was certified to the Court on February 9, 1976.

> "The Legislature finds and determines that since the enactment of P. L. 1973, c. 39 (C. 13:1I-1 et seq.) the volume of solid and liquid waste continues to rapidly increase, that the treatment and disposal of these wastes continues to pose an even greater threat to the quality of the environment of New Jersey, that the available and appropriate landfill sites within the State are being diminished, that the environment continues to be threatened by the treatment and disposal of waste which originated or was collected outside the State, and that the public, health, safety and welfare require that the treatment and disposal within this State of all wastes generated outside of the State be prohibited." (App. 61).

Similarly, the Supreme Court of New Jersey, referring to its own findings in prior litigation involving solid waste problems as well as taking judicial notice of legislative studies, stated:

> "The Court is acutely aware of the solid waste disposal problem which now exists in the State of New Jersey. Very recently we recognized that it had reached 'crisis proportions' due to the increasing scarcity of sites for dumping and landfill. *Southern Ocean Landfill, Inc.* v. *Mayor and Council of the Township of Ocean*, 64 N. J. 190, 193, 314 A. 2d 65 (1974).
>
> • • •
>
> "Compounding the shortage problem are other extremely important environmental considerations. Many existing landfills within the State are located within ecologically sensitive areas, such as floodplains, wetlands, or on State-owned public trust tidelands. The operation of landfills now located in

these areas may have to be limited or discontinued. An example of this is the action taken by HMDC in preserving some 1,500 acres of virgin wetlands which had formerly been tentatively designated for use as landfill sites. Further actions of a similar nature are contemplated, thus reducing the estimates of the potential lifespans of such existing facilities.

• • •

"Our Appellate Division has recognized that garbage and refuse may provide a direct threat to the public health. *Shaw* v. *Byram Township,* 86 N. J. Super. 598, 602, 207 A. 2d 570 (App. Div.), certif. denied, 45 N. J. 35, 210 A. 2d 780 (1965) and indeed the point is self-evident. Likewise, the detrimental effects which sanitary landfills have upon the environment have been acknowledged:

> '• • • Sanitary landfills conducted on virgin land forever ruin the possibility of preserving the site for conservation. Additionally, such landfill operations can have an adverse effect on the ecological balance of the surrounding area. A sanitary landfill operation also has *severe limiting effects on future development of the property.* Problems of settlement, gas generation, and fires make it difficult to construct structures on former landfill sites.'" (App. 33, 35, 47).

These findings must of course be accepted on appeal to the Court unless they lack a reasonable basis in the evidence. *Evco* v. *Jones,* 409 U.S. 91, 94 (1972); *Local Union No. 10* v. *Graham,* 345 U.S. 192, 197 (1952).

The New Jersey Legislature responded to this solid waste crisis by enacting chapter 363, the operative section of which provides:

> "No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of the State, except garbage to be fed to swine in the State of New Jersey, until the commissioner shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State." (App. 61-62).

Pursuant to his statutory responsibilities under chapter 363, the Commissioner of the New Jersey Department of Environmental Protection adopted rules and regulations, to become effective concurrently with the statute, which provided:

> "(a) No person shall bring into this State, or accept for disposal in this State, any solid or liquid waste which originated or was collected outside the territorial limits of this State. This Section shall not apply to:
>
> 1. Garbage to be fed to swine in the State of New Jersey;
>
> 2. Any separated waste material, including newsprint, paper, glass and metals, that is free from putrescible materials and not mixed with other solid or liquid waste that is intended for a recycling or reclamation facility;
>
> 3. Municipal solid waste to be separated or processed into usable secondary materials, including fuel and heat, at a resource recovery facility provided that not less than 70 per cent of the thru-put of any such facility is to be separated or processed into usable secondary materials; and

> 4. Pesticides, hazardous waste, chemical waste, bulk liquid, bulk semi-liquid, which is to be treated, processed or recovered in a solid waste disposal facility which is registered with the Department for such treatment, processing or recovery, other than by disposal on or in the lands of this State." N.J.A.C. 7:1-4.2 (App. 96-97).

The combined effect of chapter 363 and the implementing regulation is to prohibit the transportation into New Jersey of waste for dumping in landfills or burning in incinerators, while permitting interstate transportation of waste intended for any productive use, such as resource recovery, energy recovery or reclamation.*

The Supreme Court of New Jersey concluded that this limited restriction on the dumping or incineration of waste, as an emergency measure to cope with the State's solid waste crisis, was not incompatible with the principles of economic union embodied in the Commerce Clause. It said:

> "We recognize, and now emphasize, that the objectives of the statutes and regulations in question are not only to preserve the health of New Jersey residents by keeping their exposure to solid waste and landfill areas to a minimum, but also to preserve for the benefit of both present and future generations the natural habitat and ecological values which landfill usage would destroy. The Supreme Court has recognized that the protection of public health through the preservation of the environment is a valid, and indeed primary, objective of the police power. *Huron Portland Cement Co.* v. *Detroit*, 362 U. S. 440, 442, 80 S. Ct. 813, 4 L. Ed. 2d 852, 855 (1960). Today it cannot possibly be questioned that the preservation of the environment and the protection of ecological values are, without more, sufficient to warrant an exercise of this power." (App. 47-48).

* Appellants argue that chapter 363 on its face purports to be a prohibition on the entry of all solid and liquid wastes (except garbage for swine) for any purpose whatsoever. However, the Supreme Court of New Jersey recognized that the statute must be read with the regulations promulgated pursuant thereto prior to its effective date as only applicable to waste destined for disposal. The Court is bound by this interpretation of chapter 363 of the Supreme Court of New Jersey. *Smiley* v. *Kansas*, 196 U.S. 443, 455 (1904).

These conclusions are fully consistent with the leading Commerce Clause decisions of the Court.

The Commerce Clause of Art. 1, Section 8 of the United States Constitution provides that "[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States. . . ." It is now well established that it not only provides an affirmative grant of authority to Congress but also, even in the absence of congressional action, precludes the states from interfering with interstate commerce. It is equally well established, however, that the Commerce Clause does not require the states to permit the importation of articles which are an inherent threat to public health, safety and welfare and thus a matter of special concern in the exercise of the states' police powers. *Clason* v. *State of Indiana*, 306 U.S. 439, 442-443 (1939); *Sligh* v. *Kirkwood*, 237 U.S. 52 (1915). As the Court stated in *Sligh* v. *Kirkwood, supra*:

> "The power of the state to prescribe regulations which shall prevent the production within its borders of impure foods, unfit for use, and such articles as would spread disease and pestilence, is well-

established. Such articles, it has been declared by this court, are not legitimate subject of trade or commerce, nor within the protection of the commerce clause of the Constitution. *'Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self-protecting power of each state, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution.'"*

"Nor does it make any difference that such regulations incidentally affect interstate commerce, when the object of the regulation is not to that end, but is a legitimate attempt to protect the people of the state . . ." 237 U.S. at 60 (citations omitted) (Emphasis added.)

This principle was applied in *Clason* v. *Indiana, supra,* where the Court upheld an Indiana statute which in effect prohibited the interstate transportation of animal carcasses not slaughtered for food. The Court, relying on *Sligh,* recognized that the statute was "a sanitary and health measure *not intended to cause discrimination against or to burden interstate commerce . . .*" 306 U.S. at 443 (emphasis added). The Court clearly stated:

> "Here, contrary to what seems to be the insistence of counsel, *the State has not recognized dead horses as legitimate articles of intrastate commerce. It permits them to be sold only to licensed operators who must transport them immediately under strict sanitary regulations for prompt delivery to a licensed plant there to be rendered innocuous without delay by prescribed methods. All this is part of a workable scheme to secure prompt removal of decaying carcasses and thus protect against obvious evils.*
>
> "We can find no substantial basis for the charge of discrimination against legitimate interstate commerce. That any real burden upon commerce which the State is not free to inhibit will result from the challenged statute seems impossible.
>
> "There is no suggestion of conflict with a federal enactment. The mere power of the Federal Government to regulate interstate commerce does not disable the State from adopting reasonable measures designed to secure the health and comfort of their people. The statute under consideration is an effort to discharge an obligation to the public; the means adopted we think are clearly appropriate to this lawful end." *Id.* at 443-4 (Emphasis added).

See also *Price* v. *Illinois,* 238 U.S. 446 (1915); *Asbell* v. *Kansas,* 209 U.S. 251 (1908).

The Commerce Clause thus does not impair state authority to deal with threats to public health, safety and welfare. Rather, the intent of the Commerce Clause was to prevent economic balkanization of the states, such as by the enactment of legislation designed to further the economic interests of a state's own residents at the expense of others. This point was cogently stated by Justice Jackson in *Hood* v. *DuMond,* 336 U.S. 525, 533 (1949):

> "This distinction between the power of the State to shelter its people from menaces to their health or safety and from fraud, even when those dangers emanate from interstate commerce, and its lack

of power to retard, burden or constrict the flow of such commerce for their economic advantage, is one deeply rooted in both our history and our law."

Measured by these principles, it is clear that chapter 363 does not offend the Commerce Clause because it is properly designed to protect the public health, safety and welfare of the residents of this State rather than to serve any local economic advantage. It is clear, as indicated in the opinion of the Supreme Court of New Jersey, that there is an acute shortage of available landfill space within New Jersey. This means that New Jersey faces the threat of not being able to dispose of the wastes generated within its own boundaries unless it can find new areas for disposal. It is also clear that the disposal of waste does present a serious threat to public health, safety and welfare. It pollutes water by the runoff of leachate, it generates gases which not only can be dangerous to breathe but also create fire hazards, and it severely limits the potential future use of property on which landfills are located. Finally, it is clear that New Jersey's solid waste problems, serious in any event, have been significantly aggravated by the disposal at New Jersey landfill sites of waste from outside the state. As the Supreme Court of New Jersey found, approximately 8% of all waste disposed of in New Jersey originates out of state and in some areas the percentage of out of state waste is as high as 50% (App. 35, Pa35). Thus, chapter 363 serves a clear public health, safety and welfare interest by reducing the overall quantity of waste which the State must dispose or incinerate, and it is as fully compatible with the Commerce Clause as was the exclusion in *Clason* v. *Indiana* of animal carcasses not intended for consumption as food.

It is also clear that there is no element of economic discrimination in the exclusion from New Jersey of waste originating out of state. No New Jersey commercial interests stand to gain an advantage from this ban over competitors from outside the state. On the contrary, among the appellants are New Jersey landfill operators. The complaint is not that New Jersey has forged an economic preference for its own commercial interests but rather that, in order to protect the health, safety and welfare of the citizenry at large, it has denied a small group of its entrepreneurs an economic opportunity to traffic in waste.

The appellants, in seeking to avoid the line of cases holding that the Commerce Clause does not prevent the states from enacting legislation to protect the health, safety and welfare of their citizens, rely on cases which have no bearing upon the restrictions which the Commerce Clause places on the states, in the absence of congressional action, but deal instead with the breadth of the power which the clause confers upon Congress. See *e.g. United States* v. *Pennsylvania Refuse Removal Association,* 242 F. Supp. 794 (E.D. Pa. 1965) *aff'd* 357 F. 2d 806 (3rd Cir. 1966) cert. den. 384 U.S. 961 (1966); *United States* v. *Bishop Processing Company,* 287 F. Supp. 624 (D. Md. 1968). *Bishop Processing* recognized that the movement of air pollutants across state lines provided an adequate jurisdictional basis under the Commerce Clause for the enactment of the Clean Air Act. 42 U.S.C.A. § 1857, *et seq.* However, this does not mean that the Commerce Clause would present an obstacle to the enactment of legislation by New Jersey to prevent all of Pennsylvania's air pollution from being collected and shipped to New Jersey for release on the property of a well-paid entre-

preneur.* Similarly, although the Court has held federal statutes prohibiting the interstate transportation of prostitutes, *Hoke* v. *United States,* 227 U.S. 308 (1913), adulterated eggs, *Hipolite Egg Co.* v. *United States,* 220 U.S. 45 (1911) and kidnapped persons, *Gooch* v. *United States,* 297 U.S. 124 (1936) to be appropriate exercises of congressional power under the Commerce Clause, this does not mean that it would stand in the way of state legislation directed against these evils. The cases dealing with the reach of congressional power under the Commerce Clause are thus inappropriately relied upon by the appellants.

The appellants also rely on the "natural resource" cases to support their attack upon chapter 363. *Pennsylvania* v. *West Virginia,* 262 U.S. 553 (1923); *West* v. *Kansas Nat. Gas Co.,* 221 U.S. 229 (1911). However, these cases all dealt with statutes which attempted, as described in *Pennsylvania* v. *West Virginia,* "to regulate the interstate business to the advantage of the local customers." 262 U.S. at 597-598. Therefore, these cases involved, under the analysis contained in *DuMond* v. *Hood, supra,* state regulation ". . . to constrict the flow of . . . commerce for their economic advantage . . .", not an attempt by the State ". . . to shelter its people from menaces to their health or safety. . . ." 336 U.S. at 533. The restrictions were therefore naturally found to offend the Commerce Clause.

In short, Commerce Clause cases are concerned with the loss of products or resources to the chain of commerce.

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* Similarly, if the ships in *Huron Portland Cement* v. *City of Detroit,* 362 U.S. 440 (1960), cited by appellants, were collecting all of the smoke which was produced while steaming the Great Lakes and were releasing it in Detroit Harbor, an ordinance prohibiting such a release would not be struck down by the Court.

This is true whether the product or resource is avocados, *Florida Lime & Avocado Growers* v. *Paul,* 373 U.S. 132 (1963), butter, *Cloverleaf Butter Co.* v. *Patterson,* 315 U.S. 148 (1942), milk, *Hood & Sons, Inc.* v. *DuMond, supra,* raisins, *Parker* v. *Brown,* 317 U.S. 341 (1942), or natural gas, *Pennsylvania* v. *West Virginia, supra; West* v. *Kansas Natural Gas Co., supra.* In the present case, on the other hand, chapter 363 was not designed nor does it have the effect of furthering New Jersey commercial interests. Rather, its objective was to protect the citizens of the State from the direct threats to the public health and the environment noted by the Supreme Court of New Jersey.

In arguing that this case is not controlled by the decisions of the Court holding that the Commerce Clause is not violated by state legislation directed towards the protection of the State's health, safety and welfare, the appellants now urge, notwithstanding the record which was before the Supreme Court of New Jersey, that the disposal of waste really involves no threat to the health or welfare of New Jersey's residents. In so doing, they portray a seriously misleading picture of the record before the Supreme Court of New Jersey and the procedural history of this matter in the state courts. Significantly, appellants' belated attack on the environmental and health problems involved in solid waste disposal rests heavily on two affidavits, inserted in the appendix to their jurisdictional statement, which undoubtedly were never seen by any justice of the Supreme Court of New Jersey prior to its decision. One of the affidavits, contained in Appendix Z, is dated November 25, 1975, *a week after the decision of the Supreme Court of New Jersey from which the appellants have appealed.* The second, contained in Appendix G, was submitted to the trial court in support of an application for temporary restraints, but it was not included

in an appendix or in any other way brought to the attention of the Supreme Court of New Jersey. Therefore, appellants presented no substantial material to the Supreme Court of New Jersey to cast any doubt on the prevailing view that landfills do present serious health and environmental problems. In fact, the only material on this subject submitted to the trial court on the cross motions for summary judgment and included in the appendices to the briefs submitted to the Supreme Court of New Jersey was a lengthy document entitled, "Basis and Background for the Proposed Rules of the Bureau of Solid Waste Management". This report stated *inter alia*:

> "Recent studies indicate that sanitary landfills have environmental problems all their own. We have learned that keeping a landfill truly 'sanitary' involves much more than daily soil cover and the use of massive machinery, although these by no means are unimportant. In New Jersey virtually all sanitary landfills can be expected to produce leachate, a noxious and highly polluted liquid which is seldom visible and frequently pollutes our ground and surface waters. The natural decomposition process which occurs in sanitary landfills generates a mixture of gases. Much of this mixture is composed of methane, the same 'natural' gas used in cooking and heating." (Pa37).

After discussing in greater detail the environmental and health problems in solid waste disposal, the document concludes with a two-page bibliography of pertinent literature dealing with solid waste problems (Pa47 to Pa48). There was therefore an abundance of material before the Supreme Court of New Jersey dealing with the environmental and health problems posed by waste disposal, on which it appropriately relied in its opinion.

Appellants' final argument, apparently fashioned in recognition of the fact that the record simply does not support their claim that this case falls outside the *Clason* v. *Indiana* line of cases, is that the Supreme Court of New Jersey somehow thwarted their efforts to develop a full record and thereby denied the appellants due process of law. This contention is frivolous. It was appellants' trial strategy which determined the course of proceedings in the state courts. Soon after the filing of their complaint, the appellants moved for summary judgment ". . . only upon the issues of federal pre-emption and discrimination against interstate commerce . . ." (App. 205). Thus the essential thesis upon which the matter was submitted to the trial court was that, regardless of the impact on environmental degradation, if New Jersey permitted the dumping in landfills of waste originating within the state, it was also obligated by the Commerce Clause to accept out-of-state garbage for dumping in its landfills. On the appeal by the State to the Supreme Court of New Jersey, appellants again essentially relied upon the thesis that chapter 363 violated the Commerce Clause by "discriminating" against waste originating out of state. No serious question was raised as to the validity of legislative findings that environmental degradation was being aggravated by the dumping in New Jersey of wastes originating out of state. However, the Supreme Court of New Jersey rejected the appellants' thesis, finding that ". . . the purpose of the legislation is to protect the inhabitants and vital resources of New Jersey, not to impose economic barriers or create commercial restrictions . . ." (App. 50-51), and, as had been urged by the State,* rejected ap-

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* The brief filed with the Supreme Court of New Jersey concluded by stating that ". . . the decision below should be reversed and the matter should be remanded with instructions to grant defendants' motion for summary judgment on the Commerce Clause issue."

pellants' claim that chapter 363 was inconsistent with the Commerce Clause. It was then for the first time on a motion for remand to the trial court that appellants raised questions concerning the findings of the New Jersey Legislature and the Supreme Court of New Jersey as to the deleterious impact on the environment of the dumping of out-of-state wastes in New Jersey (App. 219-221). The Supreme Court of New Jersey, over the strenuous objections of the State, granted this motion for remand to the trial court ". . . for such further proceedings, if any, that that court may deem appropriate . . ." (App. 224). Therefore, assuming that any facts remained to be heard, which the State denied, the appellants were given an opportunity to develop those facts. However, the appellants deliberately elected not to proceed before the trial court and instead to enter into a consent dismissal with prejudice. It is therefore surprising, to say the least, to find appellants now claiming that this disposition by the state courts denied them due process of law. Appellants' explanation for this strange procedural posture is to say that they needed an injunction against the effectiveness of chapter 363 and, since the Supreme Court of New Jersey had foreclosed the grant of that relief in the state system, it was not in their strategic best interests to continue with state court proceedings. However, appellants' strategic situation did not differ from that of any other party who has been denied preliminary injunctive relief by a state court, since the right of appeal from the state courts to the Supreme Court of the United States is limited to final judgments under 28 U.S.C. § 1257(2). Therefore, if there were any substance to appellants' argument, 28 U.S.C. 1257(2), to the extent it permits appeals to the Supreme Court of the United States only from final judgments, would be subject to attack on due process grounds. The appellants' due process argument is therefore plainly frivolous.

Finally, it should be noted that if any appellant landfill operator really were in a position to establish that it could conduct a disposal operation for waste originating out of state without threat to the health, safety and welfare of New Jersey citizens, it could obtain a further exemption from the prohibitory impact of chapter 363. The statute confers broad power upon the Commissioner of Environmental Protection to permit waste originating out of state to be brought into the State where he determines that this can be done ". . . without endangering the public health, safety and welfare . . ." (App. 62). If any party were able to show that any exemptions from the prohibition against dumping waste originating out of state could be adopted ". . . without endangering the public health, safety and welfare . . .", it must be presumed that the Commissioner would extend the scope of the existing exemptions. Moreover, under the broad principles of judicial reviewability of administrative actions which exist in New Jersey (see *in re Senior Appeals Examiners,* 60 N. J. 356, 290 A. 2d 129 (1972)) if the Commissioner in exercising his power under the law were "arbitrary, unreasonable and capricious," his actions could be set aside on appeal to the courts. However, in the procedural posture in which appellants have placed this matter before the court, it must be assumed, as has been found by the New Jersey Legislature and the Supreme Court of New Jersey, ". . . that the environment continues to be threatened by the treatment and disposal of waste which originated or was collected outside of the State, and that the public health, safety and welfare require that the treatment and disposal within this State of all wastes generated outside of the State be prohibited." N.J.S.A. 13:1l-9. Accordingly, the court properly found chapter 363 to be consistent with the Commerce Clause.

CONCLUSION

It is respectfully submitted that for the foregoing reasons the appeal should be dismissed for lack of a substantial federal question.

Respectfully submitted,

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